IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

RP.No. 204 of 2007()

AGAINST THE JUDGEMENT/ORDER IN MFA.1154/2002
.....

PETITIONER/2ND RESPONDENT

NATIONAL INSURANCE COMPANY LTD.,
REPRESENTED BY ITS BRANCH MANAGER,
THODUPUZHA.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENTS: APPELLANTS 1 TO 3 AND RESPONDENTS 1,3, AND 4
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1. **ANNIE MATHEW @ ANNAKUTTY, W/O.MATHEW, KIZHAKKATHARA HOUSE.**

2. **MANU, S/O.MATHEW, AGED 16 YEARS, (MINOR), REP. BY HIS NEXT FRIEND MOTHER THE FIRST RESPONDENT.**

3. **JITHU, S/O.MATHEW, AGED 13 YEARS, (MINOR), REPRESENTED BY HIS NEXT FRIEND MOTHER THE FIRST RESPONDENT.**

4. **MR.BENNY K.CHACKO, KOZHYPOOVANANICKAL HOUSE, BAISON VALLEY POST, CHITHIRAPURAM, IDUKKI DISTRICT.**

R.P. NO.204/2007

5. IYPE MATHEW, AGED 80 YEARS,
KIZHAKKEKARA HOUSE, KUDAYATHOOR, KANJAR POST,
THODUPUZHA.

6. ALEKUTTY MATHEW, AGED 79 YEARS,
KIZHAKKEKARA HOUSE, KUDAYATHOOR, KANJAR POST,
THODUPUZHA.

BY ADV. SRI.K.RAMACHANDRAN
SRI.KRISHNAKUMAR MANGOT
SRI.GEORGEKUTTY MATHEW

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 17/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY & K.THANKAPPAN, JJ.

R.P.No.204 of 2007 in
M.F.A.No.1154 OF 2002 and
C.M.Appl.No.323 of 2007

Dated 17th July, 2007

ORDER

Koshy,J.

This review petition is filed against the judgment in M.F.A.No.1154 of 2002 with a delay condonation petition for condoning the delay of 1022 days. In M.F.A.No.1154 of 2002 notice was issued on 1.11.2002 and all the respondents accepted notice. Thereafter, if the appellant did not enter appearance through advocate or was absent at the time of hearing, it cannot be a valid ground for reviewing the judgment. Two contentions were raised in the appeal memorandum. First contention was that compensation under Section 163A cannot be granted as the deceased himself was negligent. But, following the Full Bench decision in ***National Insurance Company Ltd.*** v. ***Malathi C.Salian*** (2003 (3) K.L.T. 460) we have held that contributory negligence cannot be claimed in a petition under Section 163A of the Motor Vehicles Act. Secondly it was contended that the deceased himself was the owner. That is also not correct. First respondent in the appeal was the registered owner of the vehicle. The present contention in the review petition is that since the income was

about Rs.4,000/= per month, compensation cannot be calculated under Section 163A, but, such a ground was not taken up before the Tribunal. A ground which was not taken up before the Tribunal cannot be taken up in an appeal, that too in an appeal filed by the claimants and hence on that ground also review petition is not maintainable. In any event, we are of the opinion that no grounds are made out for condoning the long delay of 1022 days. The accident occurred in 1995. An Engineer in the Government service (PWD) aged 42 died and his dependents filed claim for compensation. In spite of receiving notice, appellant did not take up this point when the appeal was posted for hearing. In the above circumstances, there is no reason at all to condone the long delay. Hence, the delay condonation petition is dismissed. Consequently, the review petition is also dismissed.

J.B.KOSHY
JUDGE

K.THANKAPPAN
JUDGE

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